CLERK'S COPY

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1942

No. 74

WALTER L. MANGUS AND ROSE L. MANGUS,
PETITIONERS,

vs.

MATTHEW A. MILLER

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE TENTH CIRCUIT

PETITION FOR CERTIORARI FILED APRIL 11, 1942.

CERTIORARI GRANTED MAY 25, 1942.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1942

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[fol. a] [Caption omitted]

[fol. 1]

IN UNITED STATES CIRCUIT COURT OF APPEALS FOR THE TENTH CIRCUIT

No. 2285

MATTHEW A. MILLER, Appellant,

vs.

WALTER L. MANGUS and ROSE L. MANGUS, Appellees

Appellant's Statement of Points and Designation of Parts of Record—Filed March 20, 1941

Comes now Matthew A. Miller, appellant, and makes this statement of points on which he intends to rely and of the parts of the record which he thinks necessary for the consideration thereof on his appeal to the United States Circuit Court of Appeals for the Tenth Circuit for a reversal of the order of the District Court of the United States, District of Utah, made and entered February 24, 1941 overruling and denying his motion and his supplemental motion to strike property from the debtors' schedules herein, to-wit:

STATEMENT OF POINTS

Appellant says that there is manifest error in said order in that said Walter L. Mangus and Rose L. Mangus were joint tenants in and by the agreement for the sale of said property to them (which agreement is mentioned and referred to in said motions and in the affidavits of appellant and of H. P. Thomas, his counsel, in support thereof); that these proceedings were commenced December 28, 1940 by only one of said joint tenants, to-wit, Walter L. Mangus; that thereafter on January 27, 1941 appellant filed his said motion to strike said property; that Rose L. Mangus did not join therein or become party to these proceedings until she filed her "Joinder Of Rose L. Mangus" February 6, 1941 after said agreement of sale and her interest thereunder had terminated January 3, 1941, all as set forth in [fol. 2] said affidavit of appellant and said affidavit of his counsel in support of said motion to strike; and appellant says that the court erred in the particulars hereinafter set

forth and for such errors and each of them said order should be reversed, to-wit:

1. The court erred in making and entering said order overruling and denying appellant's motion to strike said property from said schedules for the reason that it did not acquire jurisdiction of the joint estate of Walter L. Mangus and Rose L. Mangus, or of the property of said joint estate, by the filing of the debtor's petition herein by said Walter L. Mangus only, one of the joint tenants, and was thereby wholly without jurisdiction of said Walter L. Mangus in regard to said joint estate and property.

2. The court erred in making and entering said order overruling and denying appellant's motion to strike said property from said schedules for the reason that it did not acquire jurisdiction of the joint estate of Walter L. Mangus and Rose L. Mangus, or of the property of said joint estate, by the filing of the debtor's petition herein by said Walter L. Mangus only, one of the joint tenants, and did not acquire jurisdiction of said joint estate or the property thereof or of said Rose L. Mangus in regard thereto by her subsequent Joinder herein February 6, 1941; said agreement of sale and her interest thereunder having previously terminated January 3, 1941 as aforesaid, and the court being at all times without jurisdiction of said joint estate and the property thereof. . .

3. The court erred in making and entering said order overruling and denying appellant's supplemental motion to strike said property from said schedules for the reasons set forth in paragraph numbered 1 hereinabove.

4. The court erred in making and entering said order overruling and denying appellant's supplemental motion to strike said property from said schedules for the reasons set forth in paragraph numbered 2 hereinabove.

5. The court erred in failing and refusing to grant appellant's motion to strike said property from said schedules for the reasons set forth in paragraph numbered 1 hereinabove.

6. The court erred in failing and refusing to grant appel-
[fol. 3] lant's motion to strike said property from said schedules for the reasons set forth in paragraph numbered 2 hereinabove.

7. The court erred in failing and refusing to grant appellant's supplemental motion to strike said property from said schedules for the reasons set forth in paragraph numbered 1 hereinabove.

8. The court erred in failing and refusing to grant appellant's supplemental motion to strike said property from said schedules for the reasons set forth in paragraph numbered 2 hereinabove.

PARTS OF RECORD NECESSARY

Appellant states that the entire record as certified up to this court by the Clerk of the United States District Court, District of Utah is necessary and material for the consideration of the foregoing points and hereby designates the same together also with the within statement of points and parts of record to be printed by the clerk as the record herein.

Dated March 19, 1941.

D. H. Thomas, H. P. Thomas, Attorneys for Appellant.

Received copy of the foregoing this 19th day of March, 1941.

J. D. Skeen, E. J. Skeen, By L. C., Attorneys for Appellees.

[File endorsement omitted.]

[fol. 4] IN UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

No. 15527

MATTHEW A. MILLER, Appellant, Debtor,

vs.

WALTER L. MANGUS and ROSE L. MANGUS, Appellees

MOTION OF MATTHEW A. MILLER TO STRIKE PROPERTY FROM DEBTOR'S SCHEDULES—Filed January 27, 1941

Comes Matthew A. Miller and moves the court to strike from the debtor's schedules of his property herein the lands and premises situate in Davis County, Utah, set forth in

schedule B-1 thereof and which are also described in the affidavit of Matthew A. Miller in support of this motion; and for general relief.

This motion is made upon the affidavit of Matthew A. Miller hereto attached and made a part hereof.

Dated this 27th day of January, 1941.

D. H. Thomas, H. P. Thomas, Attorneys for Matthew A. Miller.

In United States District Court

Affidavit in Support of Motion to Strike Property from Schedules—Filed January 27, 1941

State of Utah,
County of Salt Lake; ss:

Matthew A. Miller, being first duly sworn, on oath deposes and says that on the 3rd day of November, 1938, one [fol. 5] James K. Miller, the seller, entered into a certain agreement in writing with said Walter L. Mangus and Rose L. Mangus his wife, the buyers, in and by which said seller agreed to sell to the buyers as joint tenants with full rights of survivorship and not as tenants in common the lands and premises therein described situate in Davis County, Utah, to-wit:

Beginning at a point in the center of a 4 rod Street known as 4th East Street, which point is 3.8 rods East and 42.7 rods North from the Southwest corner of the S. W. ¼ of Section 20, Township 2 North, Range 1 East, Salt Lake Meridian, and running thence S. 81 deg. E. 23.4 rods; thence N. 12 deg. 05' E. 9.3 rods; thence N. 74 deg. 45' W. 230.7 feet; thence South to a point 80 feet North of the South boundary line of Grantors land; thence N. 81 deg. W. 195 feet to center of 4th East Street; thence South along the center of said street 80 feet to the place of beginning,

for the sum of $4000.00, payable $500.00 cash and $35.00 on the 3rd day of each and every month thereafter commencing December 3, 1938.

1. That thereafter said James K. Miller duly sold and conveyed said lands and premises and all of his right, title and interest therein, subject to said agreement, to this petitioner.

2. That said agreement provides that time is of the essence thereof and that on failure of the buyers to comply with the terms thereof or to make any payment or payments when due or in thirty days thereafter the seller should be released from all obligations in law and equity to convey said property, that all payments theretofore made thereon should be forfeited to the seller as liquidated damages for nonperformance of the contract and that the seller might re-enter and take possession of said lands and premises, and the buyers should at once become tenants at will thereof.

3. That on November 30, 1940 the buyers then being and for many months having been in default for more than thirty days in the payment of said contract, petitioner notified them in writing of such default and therein demanded that they fully make up and pay on or before January 3, [fol. 6] 1941 all payments and other sums which might then be due and owing on said contract by them, and that they thereafter at all times strictly pay and perform said contract as the same required them to do, and in case of their failure so to do on or before said January 3, 1941 that petitioner had elected that he would thereupon and without notice or demand be released of all obligations to convey said property and that said agreement and the buyers' rights, interest and possession in said property would thereupon forthwith terminate and end and be of no further force or effect whatever. That to comply with said demand or any part thereof within the time aforesaid or at all, the buyers failed, neglected and refused to do.

4. That meanwhile on December 28, 1940, said W. L. Mangus commenced these proceedings and listed among his assets in the schedules attached to his petition herein, Schedule B-1 thereof, said lands and premises, but the court is and at all times herein was wholly without jurisdiction over said property and of said debtor in regard thereto and said property should be stricken from the debtor's schedules of his property herein.

(Signed) Matthew A. Miller.

Subscribed and sworn to before me this 24th day of January, 1941. (Seal.) D. H. Thomas, Notary Public, residing at Salt Lake City, Utah.

[File endorsement omitted.]

In United States District Court

Joinder of Rose L. Mangus—Filed February 6, 1941

The above entitled court heretofore, on the 1st day of February, 1941, having made and entered its order authorizing and empowering Rose L. Mangus to join Walter L. Mangus herein,

Now, Therefore, pursuant to the said order, the said Rose L. Mangus hereby joins in the above entitled matter a-d expressly adopts the petition of Walter L. Mangus for relief under Section 75 of the Bankruptcy Act, schedules A and B attached thereto, in all respects, the same as if she had signed said petition and schedules at the time of the filing herein, and by the adoption of the said petition and sched-[fol. 7] ules, the said Rose L. Mangus hereby asserts and claims all rights that may have accrued as of the date of filing of the said petition and schedules, and prays for relief under Section 75 of the Bankruptcy Act.

J. D. Skeen, E. J. Skeen, Attorneys for Joint Tenant.
Rose L. Mangus, Joint Tenant.

United States of America,
District of Utah, ss:

Rose L. Mangus, being first duly sworn, deposes and says: That she is the person named as joining the above entitled proceeding, that she has seen and examined the petition for relief under Section 75 of the Bankruptcy Act, and the schedules A and B attached thereto. That she knows the contents of the said instruments and adopts them in their entirety and pursuant to the order of the said court and this instrument, becomes a party to the said proceeding.

Rose L. Mangus.

Subscribed and sworn to before me this 4th day of February, 1941. (Seal.) Wendell B. Hammond, Notary Public. My Commission Expires March 16, 1942.

Copy of the foregoing Joinder received this 6th day of February, 1941.

Thomas and Thomas, D. H., Attorneys for Matthew A. Miller.

It is Ordered that the Joinder of Rose L. Mangus be and the same is hereby approved as property filed.

Tillman D. Johnson, District Judge.

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

SUPPLEMENTAL MOTION OF MATTHEW A. MILLER TO STRIKE PROPERTY FROM DEBTOR'S SCHEDULES—Filed February 8, 1941.

Comes now Matthew A. Miller and moves the court to strike from the debtor's schedules of property herein the lands and premises situate in Davis County, Utah, set [fol. 8] forth in Schedule B-1 thereof and which are also described in the affidavit of Matthew A. Miller on file herein in support of this motion; and for general relief.

This motion is made upon the affidavit of Matthew A. Miller heretofore filed in support of his first and original motion to strike property from the debtor's schedules and also upon the supplemental affidavit of H. P. Thomas, counsel for said Miller, and without waiving said first and original motion but expressly insisting htereon and reserving and retaining all rights whatever thereunder.

Dated this 8th day of February, 1941.

H. P. Thomas, Daniel H. Thomas, Attorneys for Matthew A. Miller.

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

SUPPLEMENTAL AFFIDAVIT IN SUPPORT OF MOTION TO STRIKE PROPERTY FROM DEBTOR'S SCHEDULES—Filed February 8, 1941

STATE OF UTAH,
County of Salt Lake, ss:

H. P. Thomas, being first duly sworn, on oath deposes and says that he is one of counsel for Matthew A. Miller and makes this affidavit in his behalf.

Affiant hereby refers to the affidavit of said Matthew A. Miller verified January 24, 1941 which was heretofore filed herein in support of his motion heretofore made to strike property from the debtor's schedules.

on December 28, 1940, after notice of default and
od referred to in said affidavit of Matthew A. Miller,
r L. Mangus by himself and not joined by said Rose
angus his joint tenant under the agreement referred
said Miller's affidavit, commenced these proceedings,
ecause of the failure of both joint tenants to join
n the court did not acquire and does not have juris-
n of said joint estate nor of the joint tenants thereof
her of them nor of the property or any rights held by
] them in joint tenancy and said proceedings were
effect in regard to said property or estate.
t on January 3, 1941 because of their failure mean-
to comply with said notice and demand said agreement
ll of the right, title and interest of Walter L. Mangus
Rose L. Mangus in said property forthwith and abso-
terminated.
at thereafter said Matthew A. Miller filed herein his
affidavit and motion to strike said property from the
r's schedules, and the same coming on for hearing
uary 1, 1941, the court thereupon ordered the joinder
se L. Mangus herein and further ordered the hearing
id motion to be continued pending such joinder.
at thereafter Rose L. Mangus filed herein an attempted
urported joinder entitled, "Joinder of Rose L. Man-
verified February 4, 1941, but on said date she had
ght, title or interest in said property whatever, the
having theretofore terminated as aforesaid.
t being at all times without jurisdiction of said joint
and the property thereof and of said Walter L. Man-
nd Rose L. Mangus in regard thereto, the court was
s without jurisdiction to proceed herein as against said
erty except to strike same from the debtor's schedules
the attempted joinder of said Rose L. Mangus after
ermination aforesaid was and is void and of no effect
gard to said property and the court continues to be
out jurisdiction thereof and of Walter L. Mangus and
L. Mangus in regard thereto and the same should be
ken.

H. P. Thomas.

Subscribed and sworn to before me this 8th day of February, 1941. (Seal.) D. H. Thomas, Notary Public residing at Salt Lake City, Utah.

ile endorsement omitted.]

In United States District Court

Order Denying Motion and Supplemental Motion to Strike Property from Schedules—Filed February 24, 1941

This cause came on for hearing February 1, 1941 on the affidavit and motion of Matthew A. Miller to strike property [fol. 10] from the schedules of Walter L. Mangus, debtor, the sole and only debtor herein at that time, and was thereupon continued for further hearing to February 8, 1941; and on said date was further heard upon said affidavit and motion and also upon the "Joinder of Rose L. Mangus," the supplemental motion of said Miller to strike said property and the affidavit of his counsel H. P. Thomas, Esquire, (said Joinder having been filed February 6, 1941 and said supplemental motion and affidavit of counsel having been filed February 8, 1941 during said continuance); and the court having heard said motions, affidavits and Joinder and the arguments of counsel thereon, H. P. Thomas for Matthew A. Miller and J. D. Skeen for both Walter L. Mangus and Rose L. Mangus, and having duly considered the same and being fully advised in the premises,

Now, Therefore, it is hereby ordered, adjudged and decreed:

1. That said motion of Matthew A. Miller to strike from the schedules herein the real estate mentioned in said motion and described in the affidavit of said Miller supporting said motion, be and is hereby overruled and denied.

2. That said supplemental motion of Matthew A. Miller to strike from the schedules herein said real estate, also be and is hereby overruled and denied.

Done in open court at Salt Lake City, Utah, this 24th day of February, 1941.

Tillman D. Johnson, United States District Judge.

[File endorsement omitted.]

In United States District Court

Notice of Appeal—Filed February 25, 1941

To the Clerk of the above entitled court; to the above named Walter L. Mangus and Rose L. Mangus, and to J. D. Skeen and E. J. Skeen, Esquires, their attorneys:

Take notice that Matthew A. Miller hereby appears to the United States Circuit Court of Appeals for the Tenth Circuit from the order of the United States District Court, [fol. 11] District of Utah, given and made herein the 24th day of February, 1941, overruling and denying his motion and supplemental motion to strike property from the debtors' schedules herein as follows:

1. Appeals from that part of said order overruling and denying his motion to strike the property from said schedules.

2. Appeals from that part of said order overruling and denying his supplemental motion to strike the property from said schedules.

3. Appeals from said order and every part thereof.

Dated: February 25, 1941.

H. P. Thomas, D. H. Thomas, Attorneys for Matthew A. Miller.

[File endorsement omitted.]

Recital as to Appeal Bond

(Cost Bond on Appeal signed by Matthew A. Miller, as principal, and Roald Amundsen and Willard R. Smith, as sureties, and approved by Tillman D. Johnson, United States District Judge, was filed In United States District Court on February 25, 1941.)

In United States District Court

Appellant Matthew A. Miller's Statement of Points on Appeal—Filed February 26, 1941

Comes now Matthew A. Miller, appellant, and makes this statement of points on which he intends to rely on his ap-

peal to the United States Circuit Court of Appeals for the Tenth Circuit for reversal of the order of the District Court of the United States, District of Utah, made and entered February 24, 1941, overruling and denying his motion and his supplemental motion to strike property from the debtors' schedules herein, and says that there is manifest error in said order in that said Walter L. Mangus and Rose L. Mangus were joint tenants in and by the agreement for the sale of said property to them (which agreement is mentioned and referred to in said motions and in the affidavits [fol. 12] of appellant and of H. P. Thomas, his counsel, in support thereof); that these proceedings were commenced December 28, 1940 by only one of said joint tenants, to-wit, Walter M. Mangus; that thereafter on January 27, 1941 appellant filed his said motion to strike said property; that Rose L. Mangus did not join therein or become party to these proceedings until she filed her "Joinder Of Rose L. Mangus" February 6, 1941, after said agreement of sale and her interest thereunder had terminated January 3, 1941, all as set forth in said affidavit of appellant and said affidavit of his counsel in suport of said motion to strike; and appellant says that the court erred in the particulars hereinafter set forth and for such errors and each of them said order should be reversed, to-wit:

1. The court erred in making and entering said order overruling and denying appellant's motion to strike said property from said schedules for the reason that it did not acquire jurisdiction of the joint estate of Walter L. Mangus and Rose L. Mangus, or of the property of said joint estate, by the filing of the debtor's petition herein by said Walter L. Mangus only, one of the joint tenants, and was thereby wholly without jurisdiction of said Walter L. Mangus in regard to said joint estate and property.

2. The court erred in making and entering said order overruling and denying appellant's motion to strike said property from said schedules for the reason that it did not acquire jurisdiction of the joint estate of Walter L. Mangus and Rose L. Mangus, or of the property of said joint estate, by the filing of the debtor's petition herein by said Walter L. Mangus only, one of the joint tenants, and did not acquire jurisdiction of said joint estate or the property thereof or of said Rose L. Mangus in regard thereto by her subsequent Joinder herein February 6, 1941; said agreement of

sale and her interest thereunder having previously terminated January 3, 1941 as aforesaid, and the court being at all times without jurisdiction of said joint estate and the property thereof.

3. The court erred in making and entering said order overruling and denying appellant's supplemental motion to strike said property from said schedules for the reasons set forth in paragraph numbered 1 hereinabove.

4. The court erred in making and entering said order over-
[fol. 13] ruling and denying appellant's supplemental motion to strike said property from said schedules for the reasons set forth in paragraph numbered 2 hereinabove.

5. The court erred in failing and refusing to grant appellant's motion to strike said property from said schedules for the reasons set forth in paragraph numbered 1 hereinabove.

6. The court erred in failing and refusing to grant appellant's motion to strike said property from said schedules for the reasons set forth in paragraph numbered 2 hereinabove.

7. The court erred in failing and refusing to grant appellant's supplemental motion to strike said property from said schedules for the reasons set forth in paragraph numbered 1 hereinabove.

8. The court erred in failing and refusing to grant appellant's supplemental motion to strike said property from said schedules for the reasons set forth in paragraph numbered 2 hereinabove.

Dated: February 25th, 1941.

H. P. Thomas, D. H. Thomas, Attorneys for Matthew A. Miller.

Received copy of the foregoing statement this 25th day of February, 1941.

J. D. Skeen, E. J. Skeen, Attorneys for Walter L. Mangus and Rose L. Mangus.

[File endorsement omitted.]

In United States District Court

Appellant Matthew A. Miller's Designations of Record on Appeal—Filed February 26, 1941

To the Clerk of the above entitled court; to said Walter L. Mangus and Rose L. Mangus, and to Messrs. J. D. Skeen and E. J. Skeen, their attorneys:

Appellant Matthew A. Miller hereby designates the following as the portions of the record and proceedings herein to be contained in the record on appeal to the United States [fol. 14] Circuit Court of Appeals for the Tenth Circuit, notice of which appeal was heretofore duly filed in this cause on the 25th day of February, 1941 with the Clerk of the United States District Court, District of Utah herein:

1. Motion of Matthew A. Miller to strike property from debtors' schedules; said motion dated January 27, 1941.

2. Affidavit in supoprt of motion to strike property from schedules; said affidavit signed by Matthew A. Miller and verified January 24, 1941.

3. Joinder of Rose L. Mangus; said Joinder signed by her and also by her attorneys Messrs. J. D. Skeen and E. J. Skeen and filed February 6, 1941.

4. Supplemental motion of Matthew A. Miller to strike property from debtors' schedules; said motion dated and filed February 8, 1941.

5. Supplemental affidavit in support of motion to strike property from debtors' schedules; said affidavit signed by H. P. Thomas and verified February 8, 1941.

6. Order denying motion and supplemental motion to strike property from debtors' schedules; dated and filed February 24, 1941, and signed by Honorable Tillman D. Johnson, Judge of the United States District Court, District of Utah.

7. Appellant Matthew A. Miller's statement of points on appeal; herewith served and filed.

Dated: February 25, 1941.

H. P. Thomas, D. H. Thomas, Attorneys for Matthew A. Miller.

Received copy of the foregoing this 25th day of February, 1941.

J. D. Skeen, E. J. Skeen, Attorneys for Walter L. Mangus and Rose L. Mangus.

[File endorsement omitted.]

[fol. 15] Clerk's Certificate to foregoing transcript omitted in printing.

IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE TENTH CIRCUIT

ORDER RELATIVE TO SUPPLEMENTAL RECORD—August 9, 1941

On the court's own motion it is hereby ordered that the clerk of the District Court of the United States for the District of Utah make and certify to this court a true copy of the petition in bankruptcy filed by Walter L. Mangus, together with supporting schedules.

It is further ordered that the clerk of this court forthwith transmit to the clerk of the District Court of the United States for the District of Utah a certified copy of this order.

[fol. 16] IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

No. 15527

In the Matter of

MATTHEW A. MILLER

v.

WALTER L. MANGUS, et al.

PETITION, SECTION 75—Filed December 28, 1940

To the Honorable Tillman D. Johnson, Judge of the District Court of the United States for the District of Utah:

The petition of Walter L. Mangus, of Farmington, in the County of Davis, and District and State of Utah, respectfully represents:

That he is personally bona fide engaged primarily in farming operations (or that the principal part of his income is derived from farming operations) as follows: Chicken raising.

That such farming operations occur in the county (or counties) of Davis within said judicial district; that he is insolvent (or unable to meet his debts as they mature) and

that he desires to effect a composition or extension of time to pay his debts under section 75 of the Bankruptcy Act.

That the schedule hereto annexed marked "A" and verified by your petitioner's oath, contains a full and true statement of all of his debts and (so far as it is possible to ascertain) the names and places of residence of his creditors, and such further statements concerning said debts as are required by the provisions of said act.

[fol. 17] That the schedule hereto annexed, marked "B" and verified by your petitioner's oath, contains an accurate inventory of all his property, both real and personal, and such further statements concerning said property as are required by the provisions of said act.

Wherefore, your petitioner prays that his petition may be approved by the court and proceedings had in accordance with the provisions of said section.

Walter L. Mangus, Petitioner. J. D. Skeen, E. J. Skeen, Attorney.

United States of America,
District of Utah, ss:

I, Walter L. Mangus, the petitioning debtor mentioned and described in the foregoing petition, do hereby make solemn oath that the statements contained therein are true according to the best of my knowledge, information and belief.

Walter L. Mangus, Petitioner.

Subscribed and sworn to before me this 28th day of December, A. D. 1940. E. J. Skeen, Notary Public. My commission expires June 9, 1944. (Seal.)

Approved: Tillman D. Johnson, Judge.

In the Matter of WALTER L. MANGUS, Debtor

In Proceedings for a Composition or Extension

At Salt Lake City in said District, on the 4th day of January, 1941, before the Honorable Tillman D. Johnson, judge of said court, the petition of Walter L. Mangus, praying that he be afforded an opportunity to effect a composition or an extension of time to pay his debts under section 75 of the Bankruptcy Act, having been heard and duly considered, is approved as properly filed under said section.

Witness the Honorable Tillman D. Johnson, judge of said court, and the seal thereof, at Salt Lake City, in said District on the 4th day of January, A. D., 1941.

W. B. Wilson, Clerk, By Helen L. Taylor, Deputy Clerk. (Seal.)

[fol. 18] SCHEDULE A—STATEMENT OF ALL DEBTS OF PETITIONER

Schedule A-(1)

Statement of All Creditors Who Are to Be Paid in Full, or to Whom Priority Is Secured by Law

Claims which have priority	Names of Creditors and Residence	Where and When Contracted	Nature and consideration of the debt, and whether contracted as partner or joint contractor and if so, with whom.	Amount
				$ c
(1) Taxes and debts due and owing to the United States.	None			
(2) Taxes due and owing to the State of Utah or to any county, district, or municipality thereof, or to any other state or territory.	Davis County, Utah	Davis County, 1939, 1940	General Taxes	90 00
(3) Wages due workmen, clerks or servants, to an amount not exceeding $300 each, earned within three months before filing the petition.	None			
(4) Other debts having priority by law.	None		Except as otherwise stated, the consideration of each of the foregoing debts is of the full value of the amount as above set forth, and were contracted solely by petitioner, and were all on open account.	
	Except as stated, full names of creditors unknown.	Except as stated, the dates when and the places where contracted unknown.	Total.....	90 00

Walter L. Mangus, Petitioner.

[fol. 19] Schedule A-(2)—Creditors Holding Securities

[N. B.—Particulars of securities held, with dates of same, and when they were given, to be stated under the names of the several creditors, and also particulars concerning each debt, as required by acts of Congress relating to debtors, and whether contracted as partner or joint contractor with any other person, and if so, with whom.]

Names of Creditors and Residence	Description of Securities	When and where debts were contracted	Value of Securities	Amount of Debts
			$ c	$ c
Matthew A. Miller, 828 Ashton Avenue, Salt Lake City, Utah	Real Estate Contract	November 3, 1938 Farmington, Utah	4000 00	3000 00
	Except as otherwise stated the foregoing debts were on open account the consideration of each of the same is of the full value of the amount as above set forth, and were contracted solely by petitioner.			
Except as stated, full names of creditors unknown.		Except as stated, the dates and places where contracted unknown.		
		Total.....		

Walter L. Mangus, Petitioner.

[fol. 20] Schedule A-(3)—Creditors Whose Claims Are Unsecured

[N. B.—When the name and residence (or either) of any drawer, maker, indorser, or holder of any bill or note, etc., are unknown, the fact must be stated, and also the name and residence of the last holder known to the debtor. The debt due to each creditor must be stated in full and any claim by way of set-off stated in the schedule of property.]

Names of Creditors and Residence	When and where contracted	Nature and consideration of the debt, and whether any judgment, bond, bill of exchange, promissory note, etc., and whether contracted as partner or joint contractor with any other person and if so, with whom. (Date of note must be given.)	Amount
None			$ c
		Forward.....	

[fol. 21] Schedule A-(4)—Liabilities on Notes or Bills Discounted Which Ought to Be Paid by the Drawers, Makers, Acceptors, or Indorsers

[N. B.—The dates of the notes or bills, and when due, with names, residences, and the business or occupation of the drawers, makers, or acceptors thereof, are to be set forth under the names of the holders. If the names of the holders are not known the name of the last holder known to the debtor shall be stated, and his business and place of residence. The same particulars as to notes or bills on which the debtor is liable as endorser.]

Names of holders as far as known and residences	Place where contracted	Nature of liability, whether same was contracted as partner or joint contractor, or with any other person, and, if so with whom.	Amount
			$ c
None			
		Except as otherwise stated, the consideration of each of the foregoing debts is of the full value of amount as above set forth, and were contracted solely by petitioner.	
Except as stated, full names of holders on this page unknown.	Except as stated, all debts on this schedule were contracted at.....	Total.....	

Walter L. Mangus, Petitioner.

[fol. 22] Schedule A-(5)—Accommodation Paper

[N. B.—The dates of the notes or bills, and when due, with the names and residences of the drawers, makers and acceptors thereof, are to be set forth under the names of the holders; if the debtor be liable as drawer, maker, acceptor, or indorser thereof, it is to be stated accordingly. If the names of the holders are not known, the name of the last holder known to the debtor should be stated with his residence. Same particulars as to other commercial paper.]

Names of holders and residence	Name and residence of person accommodated	Place where contracted	Whether liability was contracted as partner or joint contractor, or with any other person; and if so, with whom.	Amount
None				$ c
		Except as stated, the dates when contracted unknown, and all debts on this schedule were contracted at....	Except as stated, the petitioner received no consideration for debts on this page, and they were contracted solely by petitioner.	
Except as shown, full names of holders on this page unknown.		.....	Total.....	

Walter L. Mangus, Petitioner.

Oath to Schedule A

UNITED STATES OF AMERICA,
District of Utah, ss:

On this 28 day of December, A. D. 1940, before me personally came Walter L. Mangus, the person mentioned in and who subscribed to the foregoing schedule and who, being by me first duly sworn, did declare the said schedule to

ement of all his debts, in accordance with the acts ess of March 3, 1933 relating to debtors.
ubscribed and sworn to before me this 28th day of December, A. D. 1940. E. J. Skeen, Notary Public. (Official Character.) My Commission Expires June 9th, 1944.

Schedule B—Statement of All Property of Debtor

Schedule B-(1)—Real Estate

description of all real estate debtor, or held by him.	Incumbrances thereon, if any and dates thereof	Statement of particulars relating thereto	Estimated Value
point in the center of a own as 4th East Street, 3.8 rods East and 42.7 m the Southwest corner Section 20, Township 2 East, Salt Lake Meridi- g thence S. 81° E 23.4 12° 05′ E 9.3 rods; 5′ W. 230.7 feet; thence at 80 feet North of the line of Grantors land; W 195 feet to center of ; thence South along the street 80 feet to the ing.	Real estate contract	Balance on purchase contract	$ c 4000.00
		Forward.....	4000.00

[fol. 24] Schedule B-(2)—Personal Property

		$ c
a.—Cash on hand.....	None	
b.—Bills of exchange, promissory notes, or securities of any description (each to be set out separately)	None	
c.—Stock in trade, in.....business of.....at.....of the value of.....	None	
d.—Household goods and furniture, household stores, wearing apparel and ornaments of the person, viz.....	Household furniture and wearing apparel	150.00
e.—Books, prints, and pictures, viz.....	None	
f.—Horses, cows, sheep and other animals (with number of each), viz.	1 cow 500 chickens	75.00 250.00
	Forward.....	475.00

(OVER)

[fol. 25] Schedule B-(2)—Personal Property—Continued

		$ c
g.—Carriages and other vehicles, viz	None	
h.—Farming stock and implements of husbandry, viz	Cultivator and small tools	50.00
i.—Shipping, and shares in vessels, viz	None	
k.—Machinery, fixtures, apparatus, and tools used in business, with the place where each is situated, viz.	None	
l.—Patents, copyrights, and trade marks viz	None	
m.—Goods or personal property of any other description, with the place where each is situated, viz	None	
	Except as stated, all property mentioned in this schedule is located at	
	Forward	50.00

Walter L. Mangus, Petitioner.

[fols. 26-27] Schedule B-(3)—Choses in Action

		$ c
a.—Debts due petitioner on open account	None	
b.—Stocks in incorporated companies, interest in joint stock companies, and negotiable bonds	None	
c.—Policies of insurance	None	
d.—Unliquidated claims of every nature, with their estimated value	None	
e.—Deposits of money in banking institutions and elsewhere	None	
	Except as stated, all property mentioned in this schedule is in the possession of petitioner at his home / office at	
	.....	
	Total	

Walter L. Mangus, Petitioner.

[fol. 28] **Schedule B-(4)**

Property in reversion, remainder, or expectancy, including property held in trust for the debtor or subject to any power or right to dispose of or to charge.

[N. B.—A particular description of each interest must be entered. If all or any of the debtor's property has been conveyed by deed or assignment, or otherwise, for the benefit of creditors, the date of such deed should be stated, the name and address of the person to whom the property was conveyed, the amount realized from the proceeds thereof, and the disposal of the same as far as known to the debtor.]

General Interest	Particular Description	Supposed value of my interest
		$ c
Interest in Land	None	
Personal Property	None	
	Total	
Property in money, stocks, shares, bonds, annuities, etc	None	
Rights and powers, legacies and bequests	None	
	Forward	

(OVER)

Schedule B-(4)—Continued

[fol. 29] Property in reversion, remainder, or expectancy, including property held in trust for the debtor or subject to any power or right to dispose of or to charge.

[N. B.—A particular description of each interest must be entered. If all or any of the debtor's property has been conveyed by deed or assignment, or otherwise, for the benefit of creditors, the date of such deed should be stated, the name and address of the person to whom the property was conveyed, the amount realized from the proceeds thereof, and the disposal of the same as far as known to the debtor.]

General Interest	Particular Description	Supposed value of my interest
		$ c
Property heretofore conveyed for benefit of creditors.		
What portion of debtor's property has been conveyed by deed or assignment, or otherwise, for benefits of creditors; date of such deed, name and address of party to whom conveyed; amount realized therefrom, and disposal of same, so far as known to debtor.....	None	
	Total.....	
		Amount realized from proceeds of property conveyed
What sum or sums have been paid to counsel and to whom, for services rendered to or to be rendered in this proceeding.....	None	$ c
	Total.....	

Walter L. Mangus, Petitioner.

[fol. 30] Schedule B-(5)

A particular statement of the property claimed as exempted from the operation of the Acts of Congress relating to bankruptcy giving each item of property and its valuation; and if any portion of it is real estate its location, description and present use.

		Valuation
		$ c
Military uniform, arms and equipments	None	
Property claimed to be exempted by State laws; its valuation; whether real or personal; its description and present use; and reference given to the statute of the State creating the exemption	Equity in real estate described in Schedule B 1	800 00
	Household furniture and wearing apparel	150 00
	Cultivator and small tools	50 00
	1 cow	75 00
	500 chickens	250 00
	All claims as exempted under provisions of Section 104-37-13 R.S.U. 1923.	
	Total	$1,325 00

Walter L. Mangus, Petitioner.

[fol. 31] Schedule B-(6)

Books, Papers, Deeds and Writings Relating to Debtor's Business and Estate

The following is a true list of all books, papers, deeds, and writings relating to my trade, business, dealings, estate, and effects or any part thereof, which, at the date of this petition, are in my possession or under my custody and control, or which are in the possession or custody of any person in trust for me, or for my use, benefit or advantage, and also of all others which have been heretofore, at any time, in my possession, or under my custody or control, and which are now held by the parties whose names are hereinafter set forth with the reason for their custody of the same.

Books	Deeds	Papers
None	None	None

Walter L. Mangus, Petitioner.

Oath to Schedule B

United States of America,
District of Utah, ss:

On this 28th day of December, A. D. 1940, before me personally came Walter L. Mangus, the person mentioned in and who subscribed to the foregoing schedule, and, being by me first duly sworn, did declare the said schedule to be a statement of all his estate, both real and personal, in accordance with the acts of Congress of March 3, 1933, relating to debtors.

E. J. Skeen, Notary Public. (Official Character.)
(Seal.) My Commission Expires June 9th, 1944.

[fol. 32] SUMMARY OF DEBTS AND ASSETS

(From the Statements of Debtor, in Schedules A and B)

Schedule A.	1	(1)	Taxes and Debts Due United States	
" "	1	(2)	Taxes due States, Counties, Districts and Municipalities.	90.00
" "	1	(3)	Wages.	
" "	1	(4)	Other debts preferred by law.	
Schedule A.	2		Secured claims.	3,200.00
Schedule A.	3		Unsecured claims.	
Schedule A.	4		Notes and Bills which ought to be paid by other parties thereto.	
Schedule A.	5		Accommodation paper.	
			Schedule A. Total.....	3,290.00
Schedule B.	1		Real Estate.	4,000.00
Schedule B.	2—a.		Cash on hand.	
" "	2—b.		Bills, promissory notes and securities.	
" "	2—c.		Stock in trade.	
" "	2—d.		Household goods, etc.	150.00
" "	2—e.		Books, prints and pictures.	
" "	2—f.		Horses, cows and other animals.	325.00
" "	2—g.		Carriages and other vehicles.	
" "	2—h.		Farming stock and implements.	50.00
" "	2—i.		Shipping and shares in vessels.	
" "	2—k.		Machinery, tools, etc.	
" "	2—l.		Patents, copyrights and trademarks.	
" "	2—m.		Other personal property.	
Schedule B.	3—a.		Debts due on open account.	
" "	3—b.		Stocks, negotiable bonds, etc.	
" "	3—c.		Policies of insurance.	
" "	3—d.		Unliquidated claims.	
" "	3—e.		Deposits of money in banks and elsewhere.	
Schedule B.	4		Property in reversion, remainder, trust, etc.	
Schedule B.	5		Property claimed to be excepted. $1,325.00 Put money excepted here only	XXXXX
Schedule B.	6		Books, deeds and papers.	
			Schedule B. Total.....	4,525.00

(over)

[fol. 33] [File endorsement omitted.]

Clerk's certificate to foregoing paper omitted in printing.

IN UNITED STATES CIRCUIT COURT OF APPEALS, TENTH CIRCUIT

ORDER OF SUBMISSION—November 13, 1941

This cause came on to be heard, Hadlond P. Thomas, Esquire, appearing for appellant, J. D. Skeen, Esquire, appearing for appellees.

[fol. 34] Thereupon argument was commenced by counsel and continued to the hour of adjournment.

IN UNITED STATES CIRCUIT COURT OF APPEALS, TENTH CIRCUIT

ORDER OF SUBMISSION—November 14, 1941

This cause came on further to be heard, Hadlond P. Thomas, Esquire, appearing for appellant, J. D. Skeen, Esquire, appearing for appellees.

Thereupon argument by counsel was concluded and the cause submitted to the court.

IN UNITED STATES CIRCUIT COURT OF APPEALS, TENTH CIRCUIT

OPINION—January 12, 1942

Hadlond P. Thomas (Daniel H. Thomas was with him on the brief) for Appellant.

J. D. Skeen and E. J. Skeen for the Appellees.

On Rehearing

Before Phillips, Huxman and Murrah, Circuit Judges

MURRAH, Circuit Judge, delivered the opinion of the court:

This is an appeal from an order of the District Court for the District of Utah, sustaining its jurisdiction over certain property included within the schedule of the debtor in a farmer-debtor proceedings under Section 75 of the Bankruptcy Act. (Title 11, Section 203, U. S. C. A.)

By motion to strike, the appellant challenges the jurisdiction of the bankruptcy court to administer certain property scheduled in the proceedings under Section 75 of the Act. The facts, as disclosed by the motions of the appellant, and affidavits in support thereof, show that on or about the 3rd day of November, 1938, one James K. Miller, as the seller, entered into a contract in writing with Walter L. [fol. 35] Mangus, the debtor here, and his wife, Rose L. Mangus, by the terms of which the seller agreed to sell to the buyers, Walter L. Mangus and Rose L. Mangus, "as joint tenants with full rights of survivorship and not as

tenants in common" the tract of land involved in this appeal.

The buyers agreed to pay the sum of $4,000.00; $500.00 in cash and $35.00 on the 3rd day of each month thereafter, commencing December 3, 1938. The appellant, Matthew A. Miller, acquired the contract from the original seller. The contract provided that time was the essence thereof, and on failure of the buyers to comply with the terms, or to make any payment or payments when due, or in thirty days thereafter, the seller would be released from all obligations in law and equity, to convey the said property; that all payments made thereon would be forfeited to the seller as liquidated damages for nonperformance, and the seller might re-enter and take possession of the said premises and the buyers would thus become tenants at will.

On November 30, 1940, the buyers were in default for "many months" more than thirty days, whereupon the seller notified them in writing of such default; demanded that they make full payment on or before January 3, 1941, of all sums due on the said contract or forfeit all rights thereunder.

The buyers failed to comply, but on December 28, 1940, Walter L. Mangus, without reference to his cotenant, commenced these proceedings in bankruptcy under Section 75, listing among his assets, the land in question. On January 27, 1941, the appellant filed his motion to strike from the debtor's schedule of his property, the land in question and, in support thereof, filed an affidavit narrating the facts substantially as herein stated.

Nowhere in the record are these facts traversed or disputed. But pursuant to leave granted on February 1, 1941, and on February 6, 1941, Rose L. Mangus filed what is termed a "Joinder of Rose L. Mangus," in which she attempted to join and expressly adopt the petition of Walter L. Mangus for relief under Section 75 of the Bankruptcy Act (making reference to Schedules A and B), the same as if she had signed the said petition and schedules at the time they were filed by her joint tenant. She claimed ac- [fol. 36] crued rights as of the date of the filing of the petition, and for relief under Section 75 of the Bankruptcy Act.

On the 8th day of February, 1941, the appellant seller, by supplemental motion and affidavit by his attorney, renewed his motion to strike the described property from the schedules, and again challenged the jurisdiction of the court to

administer the property in bankruptcy under Section 75, contending that the "Joinder of Rose L. Mangus," filed on February 6, 1941, did not confer jurisdiction on the court to administer the property in bankruptcy because on that date Rose L. Mangus, having forfeited all right, title, and interest in the property could not invoke the jurisdiction of the bankruptcy court; contending that the court was without jurisdiction of the joint estate and the property scheduled, and prayed that the said property be stricken from the proceedings.

On February 24, 1941, the court having considered the original and supplemental Motion to Strike and the Affidavit in support thereof, overruled and denied them. From this order the appellant has appealed.

The facts set forth in the affidavits of the appellant were not challenged or refuted on the record, and hence they stand admitted.

When Walter L. Mangus commenced proceedings under Section 75 on December 28, 1940, he and his wife, Rose L. Mangus, were the owners of a contract for a deed or a contract for sale of the land in question, as joint tenants with the right of survivorship and not tenants in common. The contract was in default but had not been forfeited. They were, therefore, jointly seized of an interest in property which was subject to the jurisdiction of a court of Bankruptcy under Section 75.

It is no longer open to question that subsections (n) and (o), 11 U. S. C. A., are sufficiently broad to include the interest of the holder of a contract for a deed or a conditional sales contract when such contract is in default but before forfeiture. From and after the date of the filing of the petition in bankruptcy the bankruptcy court acquires exclusive and paramount jurisdiction over the property, with the full [fol. 37] power to administer the same in accordance with the provisions of the Act.[1] Wright v. Union Central Life

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[1] Section 203, Title 11, U. S. C. A.

"(n) The filing of a petition or answer with the clerk of court, or leaving it with the conciliation commissioner for the purpose of forwarding the same to the clerk of court, praying for relief under this section, shall immediately subject the farmer and all his property, wherever located, for all the purposes of this section, to the exclusive juris-

Insurance Company, 304 U. S. 502 and Kalb v. Feuerstein, 308 U. S. 433.

It is equally plain that the appellant having served written notice of forfeiture as stipulated, time having been made the essence of the contract, and no extension of time having been granted, the right, title, and interest of Rose Mangus was forfeited; from and after January 3, 1941, and she thereafter had no justiciable interest in the property.[2] Her equity,

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diction of the court, including all real or personal property, or any equity or right in any such property, including, among others, contracts for purchase, contracts for deed, or conditional sales contracts, * * *."

* * * * * * *

"(o) Except upon petition made to and granted by the judge after hearing and report by the conciliation commissioner, the following proceedings shall not be instituted, or if instituted at any time prior to the filing of a petition under this section, shall not be maintained, in any court or otherwise, against the farmer or his property, at any time after the filing of the petition under this section, and prior to the confirmation or other disposition of the composition or extension proposal by the court:

* * * * * * *

"(2) Proceedings for foreclosure of a mortgage on land, or for cancellation, rescission, or specific performance of an agreement for sale of land or for recovery of possession of land; * * *

* * * * * * *

"(6) * * * conditional sale agreement, crop payment agreement, or mortgage."

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[2] Manson v. Apartment & Hotel Inv. Co., 218 P. 109; Malmstrom v. Second East Apartment Co., 278 P. 811; Tullis v. Pratt, 42 P. 2d 222; American Mortgage Co. v. Logan, 7 P. 2d 953; Wright v. Union Central Life Ins. Co., supra, and Vol. 1, Pomeroy's Equity Jurisprudence, Section 455. Cf. Kohler v. Lundberg, 180 P. 590; Parker v. California State Life Ins. Co., 40 P. 2d 175 and Columbia Airways v. Stevens, 14 P. 2d 984. See, also, 40 A. L. R. page 182.

or interest in the property having been effectively cut off, the attempted joinder was ineffectual to confer jurisdiction of the bankruptcy court over her estate in the property. Wright v. Union Central Life Ins. Co., supra, and Tullis v. Pratt, supra. The attempted joinder neither added to, nor took from the jurisdiction of the bankruptcy court.

[fol. 38] It follows that the jurisdiction of the bankruptcy court over the estate of Rose L. Mangus must fail, unless the petition and schedule of Walter L. Mangus, without reference to his cotenant operated to confer jurisdiction of the bankruptcy court over the estate of his cotenant by virtue of the applicable provisions of the Bankruptcy Act (Section 203 (s) (4) Title 11, U. S. C. A.)[3]

The provisions of the Bankruptcy Act (Section 203 (s) (4) Title 11, U. S. C. A.) are made applicable to joint tenants, but the parties have failed to avail themselves of this right until one joint tenant was no longer seized of a justiciable interest in the property. The record negatives any intention of either of them to timely avail themselves of any right accorded by the provisions of the statute noted. (Section 203 (s) (4) Title 11, U. S. C. A.)

Clearly Rose L. Mangus, although having a right to join in the proceedings while she had an interest capable of protection failed to avail herself of that right. As a result the estate of Rose L. Mangus in the property was effectively severed by forfeiture on January 3, 1941, and by such severance the joint tenancy was terminated and the appellant Miller became reinvested with her estate in the property.

The question presented under this rather anomalous state of facts is whether the failure of the court to acquire jurisdiction over the entire estate is fatal to the jurisdiction of the court over the estate of Walter L. Mangus. In other words, is Rose L. Mangus an indispensable party to the proceedings? This question can best be answered by a practical consideration of the legal effect of a final judgment between the parties as they are now cast. It is well settled that where an indispensable party is absent the court may

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[3] Sec. 75 (s) (4) of the Bankruptcy Act. 11 U. S. C. A. 203. "* * * The provisions of this Title shall be held to apply also to partnerships, common, entirety, joint, community ownerships, * * * and any such parties may join in one petition."

not grant any relief. See Franz v. Buder, 8 Cir., 11 F. 2d 854; Peterson v. Sucro, 4 Cir., 93 F. 2d 878, and Barney v. Baltimore City, 6 Wall. (73 U. S.) 280. See, also, In re Harris, 15 F. Supp. 404, and Shields v. Barrow, 15 L. Ed. 158. Bankruptcy is an equitable proceeding, and the rule [fol. 39] is applicable here. Vol. 1, Remington on Bankruptcy, Section 23, Fourth Edition and In re Harris supra.

An estate created by a joint tenancy is subject to alienation, levy and execution and is therefore susceptible of administration under the general bankruptcy law. Tiffany Real Property, Vol. 2, Section 425; Ames v. Chandler, 164 N. E. 616; In re Carpenter, 5 F. Supp. 101; Thornburg v. Wiggins, 34 N. E. 999; In re Wallace, 22 F. 2d 171, and White, Trustee, v. Stemp, 266 U. S. 310. Cf. In re Brown, 60 F. 2d 269. Under general bankruptcy the trustee becomes seized with whatever interest the bankrupt owned in the property and is charged with the duty of administering the same for the benefit of the creditors. It contemplates a marshalling and sale of the assets of the bankrupt, and the distribution of the proceeds to the creditors as their interest appear.

Thus it is conceivable that the estate of Walter L. Mangus would be the proper subject matter of a general bankruptcy proceedings, absent jurisdiction of the bankruptcy court over the estate of the joint tenant, 11 U. S. C. A. 110 (a). In re Brown, supra. Cf. In re Carpenter, supra. But a proceedings under Sections (a)-(r) of 75, 11 U. S. C. A. Section 203 (a)-(r) does not operate to pass title from the bankrupt to the trustee or the bankruptcy court, but contemplates a status quo pending an adjustment and composition of his debts and is designed to grant a moratorium wherein the debtor will retain title and emerge from the proceedings seized with all the property subjected to the bankruptcy proceedings. Wright v. Union Central Life Ins. Co., supra.

This is what Walter L. Mangus seeks to accomplish here. Suppose then that he is permitted to invoke the jurisdiction of the court over his estate and in his attempt to adjust and effect a compromise of his debts what are his rights and what are the rights of Miller? The contract between Walter L. Mangus, Rose L. Mangus, and Miller provides for the payment of the sum of $4,000.00 for a deed to certain property, the deed to be delivered upon the payment of the contract price. In effecting an adjustment and compromise shall Mangus be required to pay the entire purchase price

for an estate in common with the seller, which could be no more than a one-half interest, because Miller is now seized [fol. 40] of the interest of Rose L. Mangus over which the court has no jurisdiction, or shall Miller be required to accept one-half of the unpaid indebtedness for one-half interest in the property, to be held as tenant in common with Mangus? It becomes readily apparent that any final order or judgment which the court could make in the premises would be inconsistent with equity; in contravention of the constitutional rights of the parties, and contrary to the fundamental purposes of the Bankruptcy Act. The manifest difficulties are insurmountable.

It must be remembered that in the effectuation of the purposes of Section (a)-(r) of 75, 11 U. S. C. A. Section 203 (a)-(r), the rights of creditors are essentially and necessarily safeguarded in accordance with established judicial principles. It is not within the constitutional power of a court of bankruptcy to completely abrogate contractual rights in the effectuation of the purposes of the Act. W. B. Worthen Co. v. Thomas, 292 U. S. 426; Continental Illinois National Bank & Trust Co. v. Chicago, Rock Island & Pacific Ry. Co., 294 U. S. 648; Louisville Bank v. Redford, 295 U. S. 555; Wright v. Vinton Branch, 300 U. S. 440; John Hancock Ins. Co. v. Bartels, 308 U. S. 180, and Borchard v. California Bank, 310 U. S. 311. See Vol. 1, Remington on Bankruptcy, Section 14, Fourth Edition.

We conclude that Rose L. Mangus, as the joint tenant of Walter L. Mangus, is an indispensable party to the proceedings, because without her presence, or jurisdiction over the estate she forfeited, the court is powerless to administer the property and to render a final judgment between the parties as they are now cast, consistent with the fundamental principles of right and justice. It follows that neither Walter L. Mangus nor Rose L. Mangus acquired any remedial rights under Sections (a)-(r) of 75, 11 U. S. C. A. Section 203 (a)-(r).

The case is reversed and remanded with instructions to strike the property from the schedule.

[fols. 41-42] IN UNITED STATES CIRCUIT COURT OF APPEALS, TENTH CIRCUIT

JUDGMENT—January 12, 1942

This cause came on to be heard on the transcript of the record from the District Court of the United States for the District of Utah and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this court that the judgment of the said district court in this cause be and the same is hereby reversed; that this cause be and the same is hereby remanded to the said district court with instructions to strike from the schedule the property which was the subject matter of a contract dated November 3, 1938, between James K. Miller, as the seller, and Walter L. Mangus and his wife, Rose L. Mangus, by the terms of which the seller agreed to sell to the buyers, Walter L. Mangus and Rose L. Mangus, the property as joint tenants with full rights of survivorship and not as tenants in common; and that Matthew A. Miller, appellant, have and recover of and from Walter L. Mangus and Rose L. Mangus, appellees, his costs herein.

NOTE RE ISSUANCE OF MANDATE

(On February 17, 1942, the mandate of the United States Circuit Court of Appeals, in accordance with the opinion and judgment of said court, was issued to the United States District Court.)

Clerk's certificate to foregoing transcript omitted in printing.

[fol. 43] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed May 25, 1942

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Tenth Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied

the petition shall be treated as though filed in response to such writ.

Endorsed on Cover: File No. 46,466. U. S. Circuit Court of Appeals, Tenth Circuit. Term No. 74. Walter L. Mangus and Rose L. Mangus, Petitioners, vs. Matthew A. Miller. Petition for a writ of certiorari and exhibit thereto. Filed April 11, 1942. Term No. 74 O. T. 1942.